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National Cable Television Association

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August 20, 1999

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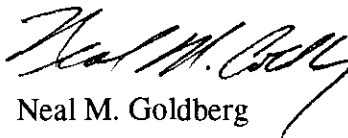
Magalie R. Salas, Secretary
Office of the Secretary
445 12th Street, SW
TW-A325
Washington, DC 20554

Re: CS Docket No. 99-250

Dear Ms. Salas:

On August 16, 1999, NCTA filed comments in the above-referenced proceeding. An erroneous docket number was included in the caption of those comments. To avoid any confusion, we are submitting another original and 10 copies of those comments with the correct docket number.

Sincerely,


Neal M. Goldberg

Enclosures

cc: ITS

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Petition for Rulemaking
To Amend Eligibility Requirements in Part 78
Regarding 12 GHz Cable Television
Relay Service

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CS Docket No. 99-250
RM-9257

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FEDERAL COMMUNICATIONS COMMISSION
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**COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION**

The National Cable Television Association ("NCTA") hereby files its comments in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable television systems serving over 90 percent of the nation's cable television households and over 100 program networks. Its membership also includes cable equipment suppliers, and others interested in or affiliated with the cable television industry.

Based on a request filed by OpTel, Inc. on April 1, 1998, the Commission proposes to amend its rules to allow private cable operators ("PCOs") and other Multichannel Video Programming Distributors ("MVPDs") to use frequencies in the 12 GHz band for the delivery of video programming. The use of the 12 GHz band is currently limited to franchised cable operators, qualified cable networks, and MDS, MMDS and ITFS operators. Cable operators and other authorized entities use 12 GHz frequencies, as well as frequencies located at 18 GHz, to transmit television and related audio signals from one point to another or to multiple points.

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THE NOTICE RAISES SEVERAL CRITICAL POLICY, TECHNICAL AND OPERATIONAL ISSUES WHICH MUST BE ADDRESSED

OpTel maintains in its Petition for Rulemaking that “it competes directly with incumbent franchised cable operators”¹ and RCN contends that granting OpTel’s petition and thereby extending CARS eligibility to PCO licensees “would establish parity between franchised cable operators ... and PCO licensees.”² OpTel further argues that by opening the 12 GHz band to PCO licensees, the Commission would enhance competition to franchised cable operators. OpTel claims that it needs the use of 12 GHz frequencies because the 18GHz frequencies it currently uses are inadequate to serve its subscribers.

Following the submission of OpTel’s Petition, the Commission, on its own motion, expanded the proposal to incorporate the use of the 12 GHz band by other MVPDs. The proposal to expand eligibility of the 12 GHz band to PCOs and other users raises serious questions. As the Commission recognizes, cable companies use these frequencies for point-to-point and point-to-multipoint video programming transmissions. For example, cable companies use the 12 GHz band where wire-based transmissions are not sufficient such as where signals must be sent from one side of a river or a mountain to the other. While cable systems have been increasingly deploying fiber in place of CARS in recent years, CARS continues to play an important role in providing cable television service to the entire franchised community. In acting on the OpTel request, the Commission should do nothing that impedes the ability of cable systems to employ the 12 GHz band to perform the critical role that it has been playing in cable transmission systems for many years.

¹ Notice of Proposed Rulemaking, Petition for Rulemaking to Amend Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service, FCC 99-166, rel. Jul. 14, 1999, at ¶ 11 (“Notice”), citing OpTel Petition for Rulemaking To Amend 47 C.F.R. § 101.603 and Related Rules—To Allow the use of 12 GHz OFS Frequencies for the Delivery of Video Programming Material, Apr. 1, 1998, at 2.

² Notice at ¶ 11.

The Commission may be able to establish procedures that accommodate PCOs, while at the same time preserving the ability of cable systems and other eligible users to continue to utilize the CARS band in its intended manner, which is the delivery of video and associated audio programming.³ However, the burden of proof lies with the petitioners, who must demonstrate that no technical or operational problems are posed by their use of the CARS frequencies. At this stage of the proceeding, NCTA will reserve final judgment pending that proof. We do raise, however, the following points.

First, cable operators are required pursuant to their franchises to serve entire communities. See 47 U.S.C. § 541 (a)(4)(A). This contrasts with PCOs, which “can select those areas and buildings where they wish to provide service and ignore less desirable areas or buildings.”⁴ Any action the Commission takes in this proceeding, should, at the very least, require the submission of technical studies and analyses demonstrating that, under no circumstances, will cable operators’ continuing ability to serve entire communities by utilizing the CARS frequencies be disrupted by PCO use of those frequencies.

Second, the Commission should require that before a PCO can apply for or be granted CARS frequencies, it first exhaust spectrum usage in the 18 GHz and 23 GHz bands. We support the Commission’s conclusion that there is no justification for allowing PCOs to use CARS frequencies if they are able to satisfy their spectrum needs by employing previously authorized frequencies. In this regard, we agree with the Commission that the range differences between 12

³ In this regard, the Commission correctly has rejected OpTel’s request to amend its Rules to add the 12 GHz band to the frequencies governed by Section 101 of the Commission’s Rules which could have had the effect of expanding permissible uses of the CARS frequencies. Notice at ¶ 9.

⁴ Id. at ¶ 16.

GHz and the higher frequencies at which PCOs are now authorized to operate “are not as significant”⁵ as the proponents suggest.

Third, if PCOs are allowed to operate in the 12 GHz band, the Commission should ensure that they do not hoard the frequencies. In other words, they should be required to show some type of proof of actual intent to install facilities and a date certain by which time they must initiate their use to prevent the warehousing of scarce spectrum space. Failure to begin operations by that date should result in return of the CARS license to the FCC.

Fourth, even if there are range differences between 12 GHz and higher frequencies, we agree with the Commission that, in order to have their proposal even considered, OpTel and its allies must submit “a detailed cost analysis and comparison, including equipment costs, comparing use of 18 GHz and 23 GHz versus use of the 12 GHz CARS band.”⁶ That analysis must demonstrate that the cost of using of the CARS frequencies would be significantly less than the costs of using the 18 GHz and 23 GHz spectrum or other alternatives.⁷

Fifth, even if permitted the use of the CARS band, PCOs should be limited to secondary use. Cable systems are subject to numerous federal and local obligations including the necessity of obtaining a local franchise, the provision of leased and PEG access channels, the payment of franchise fees and the like – none of which apply to PCOs. Most important for purposes of this proceeding, cable systems are obligated to serve entire communities, and they should not be forced to compete with cream-skimming PCOs for spectrum space. Limiting PCOs to secondary use is further justified because, as the Commission suggests, most, if not all, PCO needs can be

⁵ Id. at ¶ 18.

⁶ Id. at ¶ 14 (emphasis added).

⁷ It should be noted that the CARS rules currently require even an eligible CARS applicant to state that it “has investigated the possibility of using cable rather than microwave and the reasons why it was decided to use microwave rather than cable.” 47 C.F.R. §78.15 (b).

met with use of 18 GHz and 23 GHz frequencies. Granting primary (or co-primary) 12 GHz status to PCOs is particularly unwarranted if PCOs already have access to comparable frequencies.

In addition to limiting PCOs to secondary status, if the Commission allows PCOs to use the 12 GHz band at all, it should further limit their use of that spectrum to hub-to-hub operation. At present, cable systems and cable network entities employ the 12 GHz band for operation between hubs. OpTel, in its Petition for Rulemaking, seeks authority “to add the 12 GHz frequency band to those listed in which licensees may deliver any of their products and services.”⁸ If the Commission grants OpTel’s request to use the 12 GHz band, it should limit PCO use of that band to the same 12 GHz hub-to-hub operations as cable operators. PCOs have not established any need for hub-and-spoke use of 12 GHz. Even if PCOs can justify use of 12 GHz for hub-to-hub use, the 18 GHz band is fully adequate for microwave transmissions at distances required for PCOs’ hub-and-spoke operations.

Finally, if PCOs are allowed to use the 12 GHz band under any circumstances, they must, like other users of the band, first obtain a license before they commence transmitting. They must, also, coordinate their use of the frequencies they seek with existing users. Frequency coordination should be accomplished through a reputable frequency coordination and protection company that has the engineering resources to provide these services. Without proper frequency coordination, there is serious risk that PCOs will disrupt the efficient operation of the band.

⁸ OpTel Petition at 1.

CONCLUSION

The 12 GHz band provides a critical link between cable systems and cable networks and their customers. OpTel's Petition seeking authority to use the 12 GHz band raises critical technical and operational issues. The Commission should resolve each of the issues raised in the Notice and herein before authorizing any use by PCOs, even on a secondary basis, of 12 GHz frequencies.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel Brenner", followed by the initials "svr".

Daniel L. Brenner
Neal M. Goldberg
David L. Nicoll

Andy Scott
Director of Engineering,
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